

Remarks/Arguments

Upon entry of the instant amendment, claims 1-4 and 11-12 will be pending in this application. Claims 1, 11 and 12 are amended herein. Claims 6 and 13 are cancelled herein. Claims 1-4, 6 and 11-13 are rejected in the Office Action of February 16, 2005.

Rejection of Claims 1-4 and 6 under 35 U.S.C. § 101

Claims 1-4 and 6 are rejected under 35 U.S.C. § 101 as alleged being directed to non-statutory subject matter. Applicants respectfully traverse this rejection in view of the following remarks.

On page 5, paragraph 12 of the instant Office Action, the Examiner states:

"In the present application, the amended claim 1 still is considered non-statutory [sic, non-statutory] *as the change in the claim only appears in the pre-amble of the claim, which only relays the intention of use as it is stated as 'in a television apparatus'.*" (emphasis added)

In response, Applicants point out that the foregoing statement is an incomplete, and therefore incorrect, statement of the law. That is, the issue of whether a preamble is a claim limitation depends on the facts of the particular case "in view of the claimed invention as a whole." See *In re Stencel*, 828 F.2d 751, 4 USPQ2d 1071 (Fed. Cir. 1987). In the instant case, it is noted that the preamble of claim 1 specifically recites "a television apparatus." Moreover, the body of claim 1 further recites steps of:

"tracking a second user request to purchase a *television program* during the time period associated with each selected entry; and

notifying the user in response to the second user request, if purchasing the requested **television program** would exceed the spending limit during the time period for any selected entry.” (see claim 1 - emphasis added)

Accordingly, the recited “television apparatus” in the preamble may be considered a claim limitation in this case since it “breathes life and meaning” into the subject matter of the claim. See *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 228 USPQ 90 (Fed. Cir. 1985). That is, the term “television apparatus” in the preamble gives meaning to the term “television program” in the body of the claim. Accordingly, the use of the terms “television apparatus” and “television programs” clearly shows that the invention of claim 1 relates to a television application for producing a “useful, concrete, and tangible result” and is therefore statutory. See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 47 USPQ 2d, 1596 (Fed. Cir. 1998).

On page 5, paragraph 13 of the instant Office Action, the Examiner further states:

“Claims 1-4, and 6 remain rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a process that does nothing more than manipulate an abstract idea. ***There is no practical application in the technological arts (There is no means of mechanical or electronic use or manipulation of data)***” (emphasis added)

Applicants disagree with the foregoing statement. As previously explained above, the invention of independent claim 1 clearly has practical application in the technological arts, namely the television arts, and clearly recites means (e.g., “a television apparatus”) for the electronic use of data. Accordingly, in view of the

foregoing remarks, independent claim 1 and its dependent claims are deemed statutory under 35 U.S.C. § 101, and withdrawal of the rejection is respectfully requested.

Rejection of Claims 1-4, 6 and 11-13 under 35 U.S.C. § 103(a)

Claims 1-4, 6 and 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,559,871 issued to Smith ("Smith '871") in view of U.S. Patent No. 6,067,564 issued to Urakoshi et al. ("Urakoshi et al. '564"). The rejection of claims 6 and 13 is mooted in view of their cancellation herein. Moreover, the rejection of claims 1-4 and 11-12 is respectfully traversed in view of the accompanying amendments and the following remarks. In particular, independent claims 1, 11 and 12 are amended herein to include:

“providing a plurality of selectively actuatable entries for user spending limits with each entry being associated with a different-length time period, in response to the first user request;

receiving user selection of at least one of the entries and a spending limit for each selected entry;

determining if the spending limit for a shorter time period is greater than the spending limit for a longer time period if more than one of the entries is selected;

providing a user warning if the spending limit for the shorter time period is greater than the spending limit for the longer time period” (see claim 1 – emphasis added),

“means for providing a plurality of selectively actuatable entries for user spending limits with each entry being associated with a different-length time period, in response to a first user request;

means for receiving user selection of at least one of the entries and a spending limit for each selected entry;

means for determining if the spending limit for a shorter time period is greater than the spending limit for a longer time period if more than one of the entries is selected, and for providing a user warning if the spending limit for the shorter time period is greater

than the spending limit for the longer time period' (see claim 11 – emphasis added), and

“means for providing a plurality of spending limit entries for a single user with each entry corresponding to a different length time period, in response to the first user request;

means for receiving user selection of at least one of the spending limit entries and a spending limit for each selected spending limit entry;

means for determining if the spending limit for a shorter time period is greater than the spending limit for a longer time period if more than one of the spending limit entries is selected, and for providing a user warning if the spending limit for the shorter time period is greater than the spending limit for the longer time period' (see claim 12 – emphasis added).

As indicated above, independent claims 1, 11 and 12 provide a technique for controlling user spending when purchasing television programs that allows users to select spending limits for different length time periods. When selecting spending limits for more than one of these time periods, the present invention provides a user warning if the user attempts to set the spending limit for a shorter time period greater than the spending limit for a longer time period. In this manner, the present invention advantageously makes sure that the spending limit for a shorter time period (e.g., one day, etc.) is not greater than the spending limit for a longer time period (e.g., one week, etc.).

The proposed combination of Smith '871 and Urakoshi et al. '564 fails to teach, suggest, or otherwise disclose the aforementioned feature of the present invention that provides a user warning if the user attempts to set the spending limit for a shorter time period greater than the spending limit for a longer time period. It is noted that on page 8, paragraph 23 of the instant Office Action, the Examiner states:

"In addition, it is examiners understanding that one cannot spend for example \$100 for a period of one day when the total spending limit for a month is set to be no more than \$50 within the same month. Therefore, it would have been obvious to one having ordinary skill in the art at the time the current invention was made to add the step and limitation of comparing the shorter period spending with longer period spending to be incorporated within Smith or Urakoshi teachings to avoid over spending."

The foregoing statement, however, is inapplicable to the claimed invention. In particular, the foregoing statement ostensibly relates to tracking a user's spending ***after spending limits have already been established***. The claimed invention, however, relates to a user warning that is provided ***during the process of establishing such spending limits***. That is, the claimed invention provides a user warning if the user attempts to set the spending limit for a shorter time period greater than the spending limit for a longer time period. The proposed combination of Smith '871 and Urakoshi et al. '564 provides absolutely no teaching, suggestion, or disclosure of this feature. Accordingly, claims 1-4 and 11-12 are deemed allowable and withdrawal of the rejection is respectfully requested.

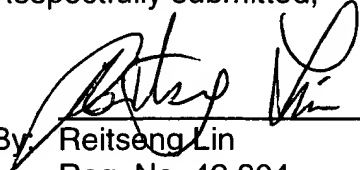
Conclusion

In view of the foregoing amendments and remarks, Applicant believes that this application stands in condition for allowance. Accordingly, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicant's attorney at (609) 734-6813, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Fee

No fee is believed due. However, if a fee is due, please charge the fee to
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Respectfully submitted,


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May 13, 2005

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